

Editor's note: Appealed -- aff'd, Civ. No. 72-117-N (S.D.Cal. Apr. 28, 1974)

JUANICE H. MCCAIN ET AL.

IBLA 70-553

Decided December 27, 1971

Desert Land Entry: Applications -- Desert Land Entry: Lands Subject to -- Withdrawals and
Reservations: Reclamation Withdrawals

Land within a first form reclamation withdrawal is not subject to desert land entry;
therefore, applications to enter the withdrawn land must be rejected, regardless of
the applicants' objections to the withdrawal.

4 IBLA 188

IBLA 70-553 : R-2232, 2233, 2234

JUANICE H. McCAIN ET AL.

: Desert land entry
: applications rejected

: Affirmed

DECISION

Juanice H. McCain, William Y. Murphey, and Joe D. McCain have appealed from a decision of the Riverside district and land office, Bureau of Land Management, 1/ dated April 24, 1970, which rejected their separate applications all filed on June 11, 1969, for entry under the Desert Land Act of March 3, 1877, as amended, 43 U.S.C. § 321 et seq. (1970).

The stated reasons for the rejection were that identical desert land applications previously filed by these applicants (R-1431, 1340 and 1435) had been rejected July 26, 1968, because the lands applied for are in a reclamation withdrawal and not subject to entry; that the status of the lands is the same as in July 26, 1968; and that the previous administrative adjudication is *res judicata*. The decision noted that the land office decisions of July 26, 1968, were affirmed on appeal to the Director, Bureau of Land Management, William Y. Murphey et al., Riverside 1340, 1431 and 1435 (September 16, 1968), and the applicants' appeals to the Secretary therefrom were summarily dismissed on a procedural ground, William Y. Murphey et al., A-31067 (December 23, 1968).

The appellants contend, inter alia, that the lapse of time since the first adjudication of their previous applications is sufficient to require reconsideration of their contention that the withdrawal order is invalid because the lands are not used or needed for any irrigation

1/ The appeals were addressed to the Director, Bureau of Land Management. The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director to the Board of Land Appeals, effective July 1, 1970. Cir. 2273, 35 F.R. 10009, 10012.

works to justify the continuing effect of the reclamation withdrawal. Additional contentions are directed primarily to the continuance of the withdrawal.

The effect of the withdrawal upon the availability of the land for desert land entry was the question decided by the Bureau in the earlier proceeding. The appellants' failure in that proceeding to perfect the appeal to the Secretary left the Bureau's decision as the final determination on the merits of that question. The land office decision was correct in concluding that the principle of res judicata and the doctrine of administrative finality bars further consideration of that question here since the same parties, the same land, and the same basic issue are involved. The Dredge Corporation, 3 IBLA 98 (August 13, 1971).

Appellants state that this proceeding is one method of "again bringing before the Secretary or his delegate for reconsideration the question of the continued purported withdrawal". The record before us shows only a determination of the effectiveness of the withdrawal. We do not know if appellants have ever petitioned the Bureau of Reclamation or the Secretary directly to have the withdrawal revoked. If not, they may do so. The question of whether the withdrawal should be continued or should be revoked is not a question we may determine in considering this appeal.

Only for the purpose of demonstrating that the application-adjudication-appeal route may not serve as the vehicle for attacking the continuation of the withdrawal do we emphasize the following:

It is immaterial to the effect of a withdrawal barring applications under the public land laws if the lands are used or needed or have ever been used for the purpose for which they were withdrawn. David W. Harper, et al., 74 I.D. 141 (1967).

Departmental regulations clearly prescribe the rejection of applications for lands in a first form reclamation withdrawal:

After lands have been withdrawn under the first form they cannot be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied. . . . (43 CFR 2322.1-1 (1971)).

Furthermore, even if the applicants petition for the revocation of the withdrawal, their desert land applications may not be suspended, but must be rejected in accordance with the above-quoted regulation and the following regulation:

. . . [A]pplications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of the lands;

. . .

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws. (43 CFR 2091.1 (1971)).

The above reasons should make it clear to appellants that so long as the lands remain within the reclamation withdrawal, applications under the Desert Land Act to enter the withdrawn lands must be rejected regardless of the appellants' objections to the withdrawal. Ernest R. Brassell et al., A-28096 (October 29, 1959); see also, Ina Jean Lang, A-29926 (February 25, 1964) and Robert S. Reese, John W. Fleming, A-29876 (February 20, 1964).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

